THE RIGHTS OF NEUTRALS

"The sovereignty of a nation extends to its citizens and their property upon the ocean. Nations at war have no natural right to interfere with citizens, or the commerce of citizens, of nations at peace."

"The United States owes it to her citizens, and to her foreign friends, to maintain a real neutrality."

"The responsibility now rests upon Congress, at least equally with the Executive, to determine what are the rights of citizens of neutral nations, and what should be done to maintain those rights."

SPEECH

OF

HON. HOKE SMITH

OF GEORGIA

IN THE

SENATE OF THE UNITED STATES

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OF GEORGIA.

THE RIGHTS OF NEUTRALS.

Mr. SMITH of Georgia. Mr. President, more than 12 months ago the British privy council began passing orders to govern their naval and prize courts providing for the seizure and disposal of cargoes of merchandise belonging to citizens of neutral countries. They ceased to rely upon established customs permitting belligerents to interfere with neutral commerce and presumed to direct at pleasure the seizure and disposition of goods belonging to citizens of the United States, and of other neutral nations.

Step by step the rights of neutrals have been disregarded, until finally, on March 1 and March 11, came the two orders from Great Britain virtually suspending the business of neutrals in the neutral ports of Holland, Denmark, Norway, and Sweden. These two orders prevented shipments to or from those ports without regard to the character of the goods to be shipped. They were based upon no contraband classification. They amounted simply to a blockade of neutral ports against the trade of citizens of neutral nations.

The Executive Department, through the Secretary of State, has three times protested to Great Britain that these orders were illegal, but no response has come from Great Britain yielding to neutrals their rights. The responsibility now rests upon the Congress, at least equally with the Executive, to determine what are the rights of citizens of neutral nations and what should be done to maintain those rights.

I propose, Mr. President, to submit authorities from Great Britain—the views of her ablest writers upon international law and decisions of the courts of Great Britain—showing that for a hundred years the British courts and the British text writers recognized rules of international law fixing the rights of neutrals that Great Britain to-day is recklessly disregarding. If the rights of citizens of the United States are being lawlessly disregarded by Great Britain, if their merchandise is being piled up illegally in British ports, if their trade with northern Europe is illegally suppressed, it is for the Congress to say what should be done to induce Great Britain to respect the rights of neutrals.

MR. JEFFERSON ON RIGHTS OF NEUTRALS.

As early as September 7, 1793, the right of the commerce of our citizens to freedom from interference by belligerents was discussed by Mr. Jefferson, Secretary of State, in a letter to Mr. Pinckney, United States minister to England.

Great Britain had passed an order in council providing for the seizure of neutral vessels loaded with foodstuffs destined to the ports of France, and providing that these vessels, when

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seized, should only be discharged upon giving security that they would go alone to ports in amity with His Majesty. Secretary Jefferson condemned the order vigorously. He declared:

> This article is so manifestly contrary to the law of nations that nothing more would seem necessary than to observe that it is so.

He pointed out that the only restriction on their natural rights submitted to by nations at peace were that they should—

> not furnish to either party implements merely of war for the annoyance of the other, nor anything whatever to a place blockaded by its enemy.

He denied that foodstuffs were considered contraband, and said:

> It suffices for the present action to say that corn, flour, and meal are not of the class of contraband, and consequently remain articles of free commerce. * * * We see, then, a practice began which strikes at the root of our agriculture, that branch of industry which gives food, clothing, and comfort to the great mass of the inhabitants of the States. * * * If we permit corn to be sent to Great Britain and her friends, we are clearly bound to permit it to France. To restrain it would be a partiality which might lead to a war with France, and between restraining it ourselves, and permitting her enemies to restrain it unrightfully, is not different. * * * This is a dilemma which Great Britain has no right to force upon us. She may indeed feel the desire of starving an enemy nation, but she can have no right of doing it at our less, or of making us the instrument of it.

RIGHTS OF NEUTRALS.

The sovereignty of a nation extends to its citizens and their property upon the ocean.

Nations at war have no natural right to interfere with citizens or the commerce of citizens of nations at peace. The customs of nations have given to belligerents certain well-defined privileges of interference with the commerce of neutrals. When interference takes place not authorized by the well-defined customs of nations the act of the belligerent nation so interfering with the commerce of a citizen of a neutral nation is lawless and violates the sovereign rights of the neutral nation.

BELLIGERENT RIGHT OF SEIZURE.

The customs of nations have given to belligerent nations the privilege of interfering with neutral commerce only on account of the existence of a blockade or on account of the character of the goods. A blockade, meeting recognized requirements, having been established by a belligerent against one or more enemy ports, the belligerent may seize the ships or merchandise of neutrals when engaged in the act of endeavoring to run the blockade. This privilege of seizure extends to goods of all character, but is limited to those endeavoring to enter a blockaded port.

To determine the privilege of interference on account of the character of the goods, goods have been divided into three classes, termed, first, absolute contraband; second, conditional contraband; and, third, absolutely free.

The privilege of seizure on account of the character of goods is entirely independent of the question of blockade, and classification of goods under either one of these three heads has been going on for many years, so that the proper status of goods under any particular head has been substantially established. To absolute contraband have been assigned goods peculiarly suited to war; to conditional contraband, goods suited to war and to peace; and to the free list those especially useful for purposes of peace.

The absolute contraband are subject to seizure if being sent directly or through neutral ports to an enemy country. The conditional contraband are subject to seizure if being sent to the army and the navy of the enemy. Neither is subject to seizure if going to a neutral country to enter there the general stock of trade. The weight of authority, and the usual custom, frees conditional contraband from seizure when sailing to a neutral country. Goods on the free list, of course, are not to be seized under any circumstances except where seeking entrance to a blockaded port.

BRITISH ORDERS OF MARCH.

On March 1 Great Britain passed an order declaring—

The British and French Governments will hold themselves free to detain and take into port ships carrying goods of presumed enemy destination, ownership, or origin.

On March 1 came the further order in council passed by Great Britain which declared a blockade of all German ports

The first and second provisions of the order of March 11 declare a blockade of all the ports of Germany. Of course, Great Britain could not blockade the Baltic. She had no vessels in it. It was entirely free to the commerce of Norway, Sweden, and Denmark. Yet she assumed to seize the vessels and merchandise of citizens of neutral countries other than Norway, Denmark, and Sweden, and carry them into her harbors before they reached the straits which separate Denmark, Norway, and Sweden.

There is no principle of international law more completely recognized than that a blockade must apply equally to all countries. There is no English student of international law who for one moment would approve as legal the seizure of neutral vessels by Great Britain, before they reached the straits separating Denmark, Norway, and Sweden, when the Baltic Sea was free to the vessels of Denmark, Norway, and Sweden.

The third and fourth provisions of the order provided:

Third. Every merchant vessel which sails from a port of departure after the 1st of March, 1915, on her way to a port other than a German port, carrying goods with an enemy destination or which are enemy property may be required to discharge such goods in a British or allied port. Any goods so discharged in a British port shall be placed in the custody of the marshal of the prize court and unless they are contraband of war shall, if not requisitioned for the use of His Majesty, be restored by order of the court upon such terms as the court may in the circumstances deem to be just to the person entitled thereto.

Fourth. Every merchant vessel which sails from a port other than a German port after the 1st of March, 1915, having on board goods which are of enemy origin or are enemy property, may be required to discharge such goods in a British or allied port. Goods so discharged in a British port shall be placed in the custody of the marshal of the prize court and if not requisitioned for the use of His Majesty shall be detained or sold in the discretion of the prize court. The proceeds of goods so sold shall be paid into court and dealt with in such manner as the court may in the circumstances deem to be just.

It will be observed that, under paragraph third, Great Britain directed the seizure of every merchant vessel sailing from a neutral port after March 1, on her way to a neutral port of northern Europe, if goods upon the vessel were to be sent to an enemy country, that is to say, into Germany or Austria. The goods when seized were to be discharged in British ports and placed in the custody of marshals of the prize court. If contraband they were to be condemned for that reason; but if not contra-

band, if innocent goods which Great Britain has no right to touch except through the creation of a legal blockade, the goods were then only to be restored to their owners upon such terms as the prize court might under the circumstances deem to be just.

Enforcing this order, Great Britain has sold in English ports cargo after cargo of merchandise belonging to citizens of the United States when the merchandise was in no sense claimed to be contraband, and settlements for the goods are still being held up, citizens of the United States having been deprived of their trade privileges, of their goods, and of the value of their goods.

In aggravation it can be shown that the same character of goods sailing from ports of the United States, destined to neutral ports of northern Europe, which were seized and carried into British ports were permitted to be sent from British ports by British owners to the same neutral ports of northern Europe from which American owners were excluded. The trade by citizens of Great Britain was greatly increased to the ports from which neutrals were excluded.

I will not discuss this aggravation of the wrong done to neutrals. I protest the illegal interference with neutral trade, even though subjects of Great Britain be not beneficiaries.

Mr. SMOOT. Will the Senator yield to me a moment for a question only?

Mr. SMITH of Georgia. Yes; but after this I would prefer to proceed without interruption.

Mr. SMOOT. All I wish to ask the Senator is as to those goods which have been seized by the British and sold to the English people. Have the American shippers or owners received compensation for the goods so seized?

Mr. SMITH of Georgia. Some have and some have not.

Mr. President, ordinarily I would be gratified to be interrupted by Senators, but I intend to endeavor to present a legal argument to the Senate, and I believe I will consume less time, and do it more satisfactorily, if I undertake to present the line of thought which is in my mind in the order in which I had contemplated presenting it.

The fourth provision of the order directs the seizure of all goods sailing from neutral ports if the goods were of origin in a country hostile to Great Britain; that is to say, in Germany or Austria. It provides that these goods are to be turned over to the prize courts of Great Britain, to be by the prize courts sold and the proceeds handled as the court may direct.

Citizens of the United States had purchased prior to March 1 large quantities of goods in Germany. Merchandise of great value had been shipped by them into Holland. It is estimated that merchandise of the value of over $100,000,000 belonging to citizens of the United States was arbitrarily stopped from sailing from the neutral ports of northern Europe.

Among other merchandise, shipments of dyestuffs, so essential to our factories, were stopped. Shipments of potash, necessary in many sections for the fertilization of the soil, were stopped. German products used for medicinal purposes were stopped.

It is true that occasionally we beg through a vessel or beg some goods through. Senators, I resent such conduct; I resent any effort to beg through a little dyestuff, or a little medicine, or a little potash, when our citizens have the absolute

right to bring here all they please, and the interference is a lawless disregard of their rights.

I have termed the treatment by Great Britain of neutral commerce through the ports of Holland, Denmark, Norway, and Sweden a blockade. We must keep in mind the fact that interference with the commerce of neutrals by belligerents is permitted upon only two grounds—blockade or the unneutral character of the goods. Seizure on account of the character of the goods is limited to contraband going to the military or naval forces of the enemy. It does not apply to goods coming from an enemy country. It applies only to a limited character of goods going into an enemy country. Yet Great Britain has ordered the seizure of all goods of enemy origin or destination. In carrying this order into effect Great Britain has restrained all shipments to and from the ports of Holland, Denmark, Norway, and Sweden. The question of the character of the goods does not limit British seizures. The course of Great Britain is a blockade of these ports, and it is covered by no belligerent right unless it falls under the head of blockade.

The blockade of neutral ports by Great Britain and the claim by Great Britain of the right to seize goods upon the sole ground that they were of enemy origin or destination violate the sovereign rights of all neutral countries.

NEUTRAL RIGHTS OF TRADE SUPPORTED BY TEXT WRITERS AND DECISIONS.

The citizens of the United States and of other neutral nations have the right to ship goods to and from Germany and Austria through the neutral ports of northern Europe. In support of these propositions I ask attention to text writers and decisions, English as well as American.

NEUTRAL PORT CAN NOT BE BLOCKADED.

Atherley Jones, in his work Commerce in War, page 92, calls attention to the fact that the right of a belligerent to conduct a blockade is a development of the rules of international law growing out of the right of seige of an enemy's port or enemy's cities. It is treated by the English writers and decisions as an act of war directed at an enemy through the port of the enemy.

In Oppenheim's International Law, volume 2, page 401, it is stated:

> A blockade can extend to a portion or all of the enemy's country.

In Hall's International Law, page 713, it is stated:

> If one bank of a river is within a neutral state, or if the upper portion of its navigable course is beyond the frontier of a hostile country, the belligerent can only maintain a blockade so far as is consistent with the right of the neutral to preserve free access to his own ports or territory, and with the right of other neutrals to communicate freely with him.

It will thus be observed that these authorities recognize a blockade as an act of war to be directed solely to an enemy's port. It can be extended to a portion or all of an enemy's country. Where a river separates an enemy and neutral country, so strict is the rule that the blockade must not extend to a neutral country that the blockade of the enemy port on the river must be conducted in a way to avoid interference with the neutral rights on the other side of the stream.

In the early part of 1908 Great Britain invited nine other great commercial nations to send delegates to a conference to be held at London, to meet with delegates representing Great Britain, the object of the conference being that the delegates

should codify the rules of international law applicable to naval warfare. Each of the ten nations furnished each of the others a memoranda giving its view of the law on the questions to be considered.

The English memoranda stated that it presented the views of the British Government, founded upon the decisions in the British courts, as to the rules of international law on the points enumerated in the program of the Conference of London. The British memoranda will be found in "Correspondence and Documents Respecting the International Naval Conference, Papers of Command, Miscellaneous No. 4, 1909."

Hereafter, this memoranda will be cited simply as "British memoranda."

On page 5, British memoranda, is found the following statement:

A blockade must be confined to the ports and coasts of the enemy. * * * The blockading forces may be disposed of at any distance from the ports or coasts blockaded that the naval authorities think fit, provided they are not so placed as to obstruct access to a neutral seaboard.

In the *Peterhoff* case (5 Wallace, p. 52) the question was whether where a river separated an enemy country from a neutral country a blockade could be extended across the river to a port of the neutral country. After reviewing the cases on the subject the Supreme Court of the United States declared:

We are not aware of any instance in which a belligerent has attempted to blockade the mouth of a river or harbor occupied on one side by neutrals, or in which such a blockade has been recognized as valid by any court administering the laws of nations. * * * It is unnecessary to examine other cases referred to by counsel. It is sufficient to say that none of them support the doctrine that a belligerent can blockade the mouth of a river occupied on one bank by neutrals with complete rights of navigation.

NEUTRAL TRADE WITH BELLIGERENTS FREE EXCEPT WHERE STOPPED AS CONTRABAND OR BY A LEGAL BLOCKADE.

It has been thought by some, without examination of the rules of international law or the customs of nations, that Great Britain was excusable for interfering with neutral commerce because the goods were eventually to go to the country of her enemies, or because the goods came from the country of her enemies.

There is no custom or rule of international law to sustain such an excuse. Neutrals have the right to trade with belligerents. Belligerents can only interfere with neutral trade on account of the character of the goods, or on account of a legally conducted blockade. The fact that goods not subject to seizure on account of their contraband nature, shipped to neutral ports, will ultimately reach the enemy of a belligerent gives no right of interference by the belligerent with those goods.

The following authorities and decisions sustain both the view that a neutral port can not be blockaded, and that through a neutral port neutrals have the right to ship to a belligerent country, and even to a blockaded port in a belligerent country.

In Hall's International Law, pages 693–695, it is stated:

At sea the rights of neutrals being equal to those of belligerents * * * the neutral has prima facie a right of access to the enemy country.

In Godfrey Lushington, Oxford, Manual of Naval Prize Law, page 37, it is stated:

If the destination (referring to the port of destination of a vessel) be neutral, then the destination of the goods on board should be considered

neutral, notwithstanding it may appear from papers or otherwise that the goods themselves have an ulterior hostile destination to be attained by transshipment over land conveyance.

In Westlake International Law, second edition, Cambridge, volume 2, page 238, it is stated:

Where the mouth of a river divides a belligerent from a neutral State, the enemy of the former does not lose his right of blockade of the shore belonging to it, but he can not interfere with the trade of the other shore. * * * A blockade can not affect the commerce which the blockaded port carries on through a neutral port with which it has inland communication.

The *Ocean* (3 C. Rob., 297): In this case goods were shipped from Amsterdam, an enemy blockaded port, to Rotterdam; Rotterdam was not subject to blockade. The goods were for export from Rotterdam to the United States. Sir William Scott, delivering the judgment, said:

I am inclined to consider this matter favorably as an exportation from Rotterdam only—the place in which the cargo becomes first connected with the ship. In what course it had traveled before that time, whether from Amsterdam at all, and if from Amsterdam whether by land carriers or one of their inland navigations, Rotterdam being the port of actual shipment, I do not think it material to inquire. * * * On the land side Amsterdam neither was nor could be affected by blockade of naval forces. It could be applied only externally. The internal communications of the country were out of its reach and in no way subject to its operation. If the exportation of goods from Rotterdam was at this time permitted it could in no degree be vitiated by a previous inland transmission of them from the city of Amsterdam.

The *Stert* (4 C. Rob., 65): The British Courts of Admiralty in this case ruled that a blockade did not affect the trade carried on with neutrals by means of inland navigation. "It was," Sir William Scott said, "a mere maritime blockade effected by force operating only at sea." He admitted that such trade would defeat, partially at least, the object of the blockade, but observed:

If that is the consequence, all that can be said is that it is an unavoidable consequence. The court can not on that ground take upon itself to say that a legal blockade exists where no actual blockade can be applied.

The *John Pieter*, 4 C. Rob. 79, was a shipment from England to Emden. The goods were shipped with a final destination to Holland which was under blockade. There was a question as to who really owned the goods; an American claimed them, and America was a neutral country. Sir William Scott, delivering the judgment, said:

Supposing the cargo to be American property, I am not inclined to think it would be affected by a blockade on the present voyage. The blockade of Amsterdam is from the nature of things a partial blockade, a blockade by sea, and if the goods were going to Emden with an ulterior destination by land to Amsterdam, or by an interior canal to destination it is not according to my conception a breach of the blockade.

The British memoranda before referred to, page 8, states:

Where the ship does not intend to proceed to the blockaded port, the fact that goods on board are to be sent on by sea or inland transportation is no ground for condemnation.

Lord Russell, representing the British Government during the Civil War, referring to the trade to Matamoras, and from Matamoras into the Confederate States, said:

To pretend that some goods carried to Matamoras may afterwards be transported across the frontier to Texas does not vitiate the legitimate character of that trade.

The French Government in the French memoranda furnished in connection with the conference at London, used the following language:

> Ships bound for a blockaded port may be captured only when they try to pass the blockaded spot. Until then their being bound for a blockaded port or for a neighboring port with goods for a blockaded port does not constitute a breach of neutrality. (P. 30 translation.)

In Lushington's Naval Prize Law, pages 16 and 17, it is stated:

> It is true that a breach of blockade is not committed by a vessel which, herself beyond the blockade line, takes on board goods exported overland from the blockaded port or by a vessel which carries goods to an open port to be forwarded thence overland into a blockaded one, but in each of these cases the blockade line is not crossed by the goods. In other words, the blockade has not been broken.

The Supreme Court of the United States in the *Peterhoff* case, reviewed the English decisions in connection with the question of ulterior destination to the Confederate States by inland conveyances of goods shipped to Matamoras, a neutral port, and the court stated:

> Upon this question the authorities seem quite clear.

Calling attention to the facts and decisions in a number of cases in which it was held that the goods of neutrals could not be seized, the Chief Justice delivering the opinion of the court, said:

> These were cases of trade from a blockaded to a neutral country by means of inland navigation to the neutral port or a port not blockaded. The same principle was applied to trade from a neutral to a blockaded country by inland conveyance from the neutral port of primary destination to the blockaded port of ulterior destination. Goods belonging to neutrals * * * were held not liable to seizure. * * * These cases fully recognize the lawfulness of neutral trade to or from a blockaded country by inland navigation or transportation, * * * and the doctrines of international law lead irresistibly to the same conclusion. We know of but two exceptions to the rule of free trade by neutrals with belligerents; the first is that there must be no violation of blockade or siege; and the second, that there must be no conveyance of contraband to either belligerent. * * * The trade of neutrals with belligerents in articles not contraband is absolutely free unless interrupted by blockade.

DECLARATION OF LONDON.

The highest authority upon the law of naval warfare is found in the Declaration of the International Naval Conference, held in London during the winter of 1908–9, commonly called the "Declaration of London."

The Governments of Great Britain, Austria-Hungary, France, Germany, Italy, Japan, Russia, Spain, the United States of America, and Holland were represented at this conference. The conference was held as the result of a letter sent by the British Government through Sir Edward Grey to the representatives of Great Britain in each one of these countries, tendering an invitation to them to hold the conference. The conference was invited to consider the rules of naval warfare, "including the circumstances under which particular articles can be considered as contraband; * * * blockade, including the questions as to the locality where seizure can be effected; * * * the doctrine of continuous voyage in respect both of contraband and of blockade." The letter stated that the conference was to be held "with the object of arriving at an agreement as to what

are the generally recognized principles of international law" upon the subjects to be considered.

TO EXPRESS GENERALLY RECOGNIZED RULES OF INTERNATIONAL LAW.

In an official letter of November 1, 1908, Sir Edward Grey describes the work of the proposed conference as follows:

> The proposed declaration should, in the opinion of His Majesty's Government, place on record that those powers * * * recognize that there exists in fact a common law of nations of which it is the purport of the declaration in common interest to set out the principles, that in thus defining the generally recognized rules of international law the conference will put an end to many uncertainties and doubts which are a danger both to peaceful commerce and to good political relations.

Other quotations from the correspondence equally important could be made, but these are sufficient to establish the fact that Great Britain regarded the conference as authorized to make a declaration which would amount in fact to the common law of nations upon the subject of naval warfare, and that the agreement of the delegates upon the questions submitted for their consideration was to become an official declaration of the international law upon the subjects considered.

Great Britain designated Lord Desart to be His Majesty's plenipotentiary. His commission gave him full power "to sign an international agreement which may result from the deliberations of the conference." With Lord Desart were associated, representing Great Britain, Rear Admiral Sir Charles Ottley, secretary of the imperial defense; Rear Admiral Slade, director of naval intelligence, and Messrs. Crow and Hearst, counsel of His Majesty's Foreign Office.

At the head of the French delegates was Monsieur Louis Renault, professor of law at Paris, legal advisor to the Minister of Foreign Affairs, principal of the University of France, and member of the Permanent Court of Arbitration.

The nine other nations designated their ablest students of international law to represent them at this conference. The conference extended from early in December until late in February. At the suggestion of the British Government, each of the countries furnished in advance to each of the other countries a memoranda of its views as to the rules of international law upon the points to be considered by the conference.

The conference, comprised of about 40 members, reached a unanimous agreement and embodied it in 64 articles, which they prefaced with the following statement:

> The signatory powers are agreed that the rules contained in the following chapters correspond in substance with the generally recognized principles of international law.

If the agreement of the conference, called the Declaration of London, had been ratified by the respective nations, it would have become binding upon all of them as a treaty agreement. Unratified it furnishes the world authority upon the rules of international law, considered by the conference far higher than that to be found elsewhere.

What matters it whether, by treaty agreement, some country said: "We will agree to obey the law"? Here was the solemn decision of the chosen men of 10 great nations that these articles embodied the law. A treaty agreement with reference to it would have been simply an agreement between two or more nations that they would abide the law. Where will you find what are the correct rules of international law on these subjects if you do not find them in this declaration?

Admiral Charles H. Stockton, the leading representative of the United States in the conference, in his work on Outlines of International Law, page 58, referring to the Declaration of London, declares:

> Whether formally ratified or not by the signatory and other powers, it has the authoritative weight due to the unanimous vote of the representatives of the great maritime powers and to their declaration that it represents the actual principles of international law upon the subjects dealt with.

In a letter of March 30 to the British Government the representatives of Great Britain in this conference reported, with reference to the effect of the rules upon which they agreed, as follows:

> These rules do amount practically to a statement of what is the essence of the law of nations properly applicable to the questions at issue under present conditions of maritime commerce and warfare. We believe we have clearly vindicated this principle by securing the insertion at the head of the declaration of the preliminary provision which dominates the whole series of articles. This provision declared that in the opinion of the signatory powers the rules contained in the declaration correspond in substance with the generally recognized principles of international law.

I think it unfortunate that the Declaration of London was not presented to the belligerent nations, and forcefully held before them, not as binding by treaty but as the law, backed by an authority far greater than a mere treaty would make it as being the law. I dwell upon the Declaration of London, and its weight, as authority, because at a later day I shall desire to discuss some questions, using the Declaration of London, to which I do not expect to refer at this time. I wish to present it to the thought of Senators. I wish to answer the trivial, light mode in which certain newspapers have sought to sweep it away, because it was not ratified through a treaty agreement.

The Declaration of London was approved by the British House of Commons during the summer of 1911.

In a debate upon the floor of the House of Commons Mr. McKinnon Wood, a member of the Government and representing the Government in the debate, declared that the Declaration of London contained the English view of the law of blockade "en bloc." No one questioned the correctness of his statement.

The opposition to approving the Declaration of London in the House of Commons was principally because foodstuffs had not been placed on the free list. Mr. McKinnon Wood, representing the Government, replied, in substance, "We tried to put foodstuffs upon the free list, but we could not do it. But," said he, "we have placed cotton on the free list."

Sir Arthur Balfour replied, in substance, "To be sure, but you have accomplished nothing. Through all time this commodity, so essential for the peaceful purposes of the peoples of the world, has been on the free list." "But," he said, again, "you claim that Russia in 1904, during the Japanese War, put it on her contraband list." "Yes; and we promptly protested the legality of Russia's conduct, and Russia yielded." And the one exception abandoned, Mr. Balfour said, emphasized the true rule that the custom of nations has put cotton on the free list, "and you have done nothing for commerce by putting it there in the Declaration of London."

Now let us turn to the Declaration of London and see what the representatives of the 10 great naval powers determined was the true rule of international law applicable to blockade, em-

bodying, as it did, the English view of the law "en bloc." The declaration reads:

Article 1. A blockade must not extend beyond the ports and coasts belonging to or occupied by the enemy.

* * * * * * *

Article 18. The blockading forces must not bar access to neutral ports or coasts.

M. Renault prepared the explanation which accompanied the articles. In explaining article 18 he used the following language:

This rule has been thought necessary the better to protect the commercial interests of neutral countries. It completes article 1, according to which a blockade must not extend beyond the ports and coasts of the enemy, which implies that as it is an operation of war, it must not be directed against a neutral port, in spite of the importance to a belligerent of the part played by that neutral port in supplying its adversary.

The Declaration of London further provides:

Article 5. A blockade must be applied impartially to the ships of all nations.

The British memoranda of the law, paragraph 4, under the head of Blockade, provides:

A blockade must be impartially enforced against the ships of all nations.

Great Britain simply seizes the vessels carrying cargoes owned by citizens of neutral countries, whether coming out of or going into the ports of the countries of northern Europe. That this blockade of neutral ports is illegal can not, and will not, be seriously questioned.

It has been and is a deliberate disregard of the rights of neutrals by Great Britain. There can be no pretense that this interference with neutral trade is sustained by the customs of nations. Indeed, there is no such pretense. It is a bold, reckless disregard of that freedom of the sea which is the right of neutrals by the customs of nations and rules of international law.

Yet, for more than eight months this disregard of the sovereign rights of all neutral countries has been permitted to continue to the serious injury of the commerce of their citizens.

A feeble effort has been made to excuse the course of Great Britain, not upon the ground that it is legal but upon the ground that the Government of the United States during the Civil War illegally and improperly acted in the same way.

Men even in the United States have sought to excuse Great Britain by stating that the United States, during the Civil War, blockaded neutral ports and furnished a precedent for what Great Britain is now doing. I do not know any law by which we can punish the men who circulate such injurious slanders against their Government. They at least ought to have our intense contempt.

The United States never blockaded a neutral port during the Civil War. That statement is as false as the statement that the United States declared cotton contraband during the Civil War. The last statement is stupidly false.

What is a contraband order? It is an order to prevent unneutral goods from going into an enemy country, where they will be used for purposes of war. Who would accuse Mr. Lincoln of being so foolish as to wish to keep cotton from going into the Southern States? That is where it was raised. There

never was such an order; and to rest their case upon it is another piece of ignorance, or worse.

CIVIL WAR PRECEDENTS CONDEMN GREAT BRITAIN.

An examination of the decisions of the Supreme Court of the United States destroys this excuse and condemns Great Britain.

The cases used to sustain the contention are the *Springbok* and the *Bermuda*. In these cases the Supreme Court of the United States laid down the rule that where merchandise was shipped from neutral ports, in vessels with a nominal destination of Nassau but really intended to run the blockade of ports of the Southern States, or where the merchandise sailed upon vessels destined for Nassau but the shippers had arranged from the first to send the merchandise in other vessels to southern ports, running the blockade, the purpose of running the blockade attached to the goods through their entire journey, and rendered them subject to seizure.

It will be observed that in these cases the right of seizure was based, not upon a blockade of a neutral port but upon the fact that the shippers had arranged a continuous voyage for the goods by sea into a blockaded port, and the seizures were solely justified upon the ground that the goods were being carried by a continuous voyage into a blockaded port.

Nassau was not blockaded by the United States, but merchandise, the owners of which started it with the purpose of not stopping at Nassau but of continuing shipment by water into and through the blockaded ports of the Southern States, was seized upon the ground that the goods were really running the blockade into blockaded ports of the Southern States.

In the *Bermuda* case the court said:

> We agree to this. Neutrals might convey in neutral ships from one neutral port to another any goods whether contraband of war or not if intended for actual delivery at the port of destination and to become part of the common stock of the country or of the port.

The cargo of this vessel consisted almost exclusively of goods belonging to Frazier Trenholm & Co., at Liverpool, a branch of the house of John Frazier & Co., at Charleston, and the fiscal agents of the Confederacy in Great Britain, in which capacity they were largely engaged in fitting out cruisers and blockade runners. It consisted in part of—

> lawns with figures of a youth bearing onward the Confederate flag, military decorations, epaulettes, stars for the shoulder straps of officers of rank, many military articles with designs appropriate for use in the Confederate States, case of cutlery stamped with the name of merchants in Confederate cities, several cases of double-barreled guns stamped as manufactured for a dealer at Charleston, a large amount of munitions of war, five finished Blakely cannon in cases, with carriages, six cannon without cases, a thousand shells, several hundred barrels of gunpowder, 72,000 cartridges, 2,500,000 percussion caps, 21 cases of swords, and in addition a large quantity of army blankets and other materials.

There were residents of Charleston on board listed as common sailors under disguised names. Of the ship's real company, the master, the first mate, the clerk, and three seamen were citizens of South Carolina. The second mate, carpenter, and cook belonged to other Confederate States.

The ostensible owner of the ship was a British subject, but the day after her registration he executed a power of attorney to two citizens of Charleston, S. C., to sell the ship for any sum they might deem sufficient.

At the time of the capture and after the vessel was boarded the captain's brother, by his order, threw overboard two small boxes and a package which he swore he understood contained postage stamps and a bag which he understood contained letters and which he was instructed to destroy in case of capture.

It was held that the nominal ownership of the *Bermuda* was a pretense and that the vessel was rightly condemned as enemy property. It was further held among other things that the consignment of the whole cargo "to order or assigns" meant, in fact, to the order of John Frazier & Co., of Charleston.

In the case of the *Springbok* it was found by the court that—

Upon the whole case we can not doubt that the cargo was originally shipped with intent to violate the blockade; that the owners of the cargo intended that it should be trans-shipped at Nassau into some vessel more likely to succeed in reaching safely a blockaded port than the *Springbok* that the voyage from London to the blockaded port was, as to cargo, both in law and in the intent of the parties one voyage.

Both these cases were severely criticized by English law writers at the time. These cases were each based, however, upon the theory that the voyage was illegal because it was conducted for the purpose of entering a port in disregard of a blockade. They in no sense excuse the effort of Great Britain to blockade the neutral ports of northern Europe.

On the contrary the Supreme Court of the United States in the *Peterhoff* case considered the rights of ships and cargoes really destined to neutral ports. The *Peterhoff* sailed from England to Matamoras, Mexico. Chief Justice Chase delivered the opinion of the court. The Supreme Court held:

First. That the mouth of the Rio Grande was not included in the blockade of the ports of the rebel States, and neutral commerce with Matamoras, except in contraband, is entirely free.

Second. Neutral trade to and from a blockaded country by inland navigation or transportation is free.

After reviewing a number of English cases the court says:

These cases fully recognize the lawfulness of neutral trade to or from a blockaded country by inland navigation or transportation. * * * And the general doctrines of international law lead irresistibly to the same conclusion. * * * The doctrine of the *Bermuda* case, supposed by counsel to have an important application to that before us, has, in reality, no application at all. The *Bermuda* and her cargo were condemned because engaged in a voyage ostensibly for a neutral, but in reality either directly, or by substitution of another vessel, for a blockaded port. The *Peterhoff* was destined for a neutral port, with no ulterior destination for the ship, and none by sea for the cargo to any blockaded place. In the case of the *Bermuda* the cargo, destined primarily for Nassau, could not reach its ulterior destination without violating the blockade of the rebel ports; in the case before us the cargo, destined primarily for Matamoras, could reach an ulterior destination in Texas without violating any blockade at all.

We must say, therefore, that trade between London and Matamoras, even with intent to supply from Matamoras goods to Texas, violated no blockade and can not be declared unlawful. "Such trade," said the Court, "with unrestricted inland commerce between such a port and the enemy's territory, impairs, undoubtedly, and very seriously impairs, the value of the blockade of an enemy's coast. But in cases such as that now in judgment we administer the public laws of nations, and are not at liberty to inquire what is for the particular advantage or disadvantage of our nation or another country."

So, Mr. President, we make an overwhelming case—an irresistible case—against Great Britain for passing and enforcing these orders of March 1 and March 11. Great Britain has suppressed the trade of neutrals through neutral ports, assuming the right to control the trade in free goods with her enemies. A great loss has been brought upon citizens of the United

States in consequence of this action. Are we simply to submit? Are we to continue to accord to Great Britain her neutral privileges while she tramples upon the neutral rights of citizens of the United States?

I will not at this time discuss in detail the illegal efforts of Great Britain to change the recognized status of goods based upon their character. While the blockade by Great Britain of the neutral ports of northern Europe continues, orders affecting the character of goods are immaterial, as all neutral goods are prevented from entering the neutral ports; discriminations as to the nature of the goods do not affect them.

It is, however, true that the British Government, through Sir Edward Grey, advised the British delegates to the London conference, referring to additions by belligerents to the list of absolute contraband, as follows:

It appears to be generally agreed that no such additions ought in any case to be admissible except in cases of articles which can not be utilized for other than warlike purposes.

The declaration of London, following this view of the English Government, declares:

Article 23. Articles exclusively used for war may be added to the list of absolute contraband.

In the *Peterhoff* case the Supreme Court of the United States held:

It is true that even these goods (referring to absolute contraband), if really intended for sale in the market of Matamoras, would be free of liability, for contraband may be transported by neutrals to a neutral port if intended to make part of its general stock in trade.

In the *Peterhoff* case the Supreme Court held that absolute and conditional contraband passing through a neutral port if shown to be for the army of an enemy could be held. Criticizing this opinion the Maritime Prize Commission of the Institute of International Law, composed of members of the various nationalities, and including W. E. Hall, of Oxford, Sir Travers Twist, an English writer upon international law, and M. Renault, professor of international law at the University of Paris, declared the cases to be—

subversive of the established rule of the law of maritime warfare, according to which neutral property on board a vessel under a neutral flag, whilst on its way to another neutral port, is not liable to capture or confiscation by a belligerent. (Moore's Digest, vol. 7, pp. 731–732.)

Differences of opinion with reference to the treatment of contraband were solved by the London conference, which determined that the correct view of the rules of international law made absolute contraband passing through a neutral port subject to seizure where shown to be destined from the first to an enemy country, but as to conditional contraband the declaration declared, article 35:

Conditional contraband is not liable to capture except when found on board a vessel bound for territory belonging to or occupied by the enemy or for the armed forces of the enemy, and when it is not to be discharged in an intervening neutral port.

So that under the authorities, with the blockade raised in these neutral ports, the status of neutral trade would be about this:

A belligerent can not add to a list of absolute contraband any goods which can be used for other than warlike purposes.

Goods, properly upon a list of absolute contraband, can be seized though belonging to neutral citizens and sailing to neutral ports, if shown to be intended for an enemy country.

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Conditional contraband sailing to neutral ports, belonging to neutral citizens, can not be seized by a belligerent.

Goods neither absolute nor conditional contraband can pass entirely free from interference.

Goods sailing to a neutral country, there to enter the general stock in trade, and really for sale in the markets of the country, would be free of liability to seizure.

I have presented so fully the rules of international law, applicable to the rights of neutrals, because it should be known that Members of Congress appreciate how recklessly the rights of citizens of this country are being disregarded.

For a hundred years the relations between the United States and Great Britain have been growing closer and closer. A most cordial regard has united the people of both countries. But we are not a dependency of Great Britain.

Germany has always been a friend of the United States, and many of our best citizens love their Fatherland only second to their love and loyalty for our own country.

We deplore the terrible war; but the United States owes it to her citizens and to her foreign friends to maintain a real neutrality.

Neutrals must maintain their neutral rights to maintain neutrality. Great Britain may desire to crush an enemy nation through the suppression of trade, "but she can have no right of doing it at our loss, or of making us the instrument of it."

The United States, with other neutral nations, should demand from Great Britain that disregard of their rights cease. It may be necessary for the United States and other neutrals to let Great Britain understand that no "word or act" will be omitted to enforce their rights.

We may hope Great Britain will comply, not alone because she must retain friendly relations with neutral nations to supply her own population with the necessaries of life, but because the people of that great nation, and those there in authority, must desire to obey the rules of international law they have contributed so much to establish and to which they are so thoroughly committed.

At the close of the last protest against the British orders of March 1 and 11, the Executive department, speaking through the Secretary of State, used the following language:

> The task of championing the integrity of neutral rights, which have received the sanction of the civilized world, against the lawless conduct of belligerents arising out of the bitterness of the great conflict which is now wasting the countries of Europe, the United States unhesitatingly assumes, and to the accomplishment of that task it will devote its energies, exercising always that impartiality which from the outbreak of the war it has sought to exercise in its relations with the warring nations.

So far the protests of the Executive department against the lawless conduct of Great Britain have been answered by increased lawlessness. Step by step the rights of the citizens of neutral nations to buy and sell merchandise in foreign markets have been suppressed.

It is for Congress to determine what value it will be to the integrity of neutral rights for the United States to have become unhesitatingly their champion.

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